

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,  
by D. MICHAEL FISHER,  
Attorney General,

Plaintiff

v.

SUN TOBACCO, LTD.,

Defendant

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No. M.D. 2001

**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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213 North Front Street  
Harrisburg, Pennsylvania 17101  
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**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA,**  
**by D. MICHAEL FISHER,**  
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**Plaintiff**

v.

**SUN TOBACCO, LTD.,**

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**No. M.D. 2001**

**COMPLAINT**

**PRELIMINARY STATEMENT**

1. This is an action to enforce the Tobacco Settlement Agreement Act of 2000,  
35 P. S. §5671 et seq.

2. The Tobacco Settlement Agreement Act provides, in pertinent part, that:

Any tobacco product manufacturer that sells cigarettes to consumers within this Commonwealth after the effective date of this act shall do one of the following:

(1) Become a participating manufacturer as defined in the Master Settlement Agreement and generally perform its financial obligations under the Master Settlement Agreement.

(2) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts, as the amounts are adjusted for inflation:

(i) 2000 - \$.0104712 per unit sold after the effective date of this act.

(35 P. S. §5674(a)). The Defendant is a tobacco product manufacturer that has failed to do either of these things.

3. The Act provides that the Commonwealth shall enforce its provisions.

Failure to comply can result in civil penalties, attorney fees and costs. (35 P.S. §5674).

**PARTIES**

4. Plaintiff is the Commonwealth of Pennsylvania, by and through its Attorney General, D. Michael Fisher. It is authorized to bring this action pursuant to 35 P. S. §5674(c).

5. Defendant Sun Tobacco, Ltd. is a Florida corporation with a principal place of business at 1674 N.W. 17<sup>th</sup> Avenue, Miami, FL 33125.

### **JURISDICTION**

6. The Court has jurisdiction over original actions brought by the Commonwealth government pursuant to 42 Pa. C. S. §761.

### **FACTUAL ALLEGATIONS**

7. Sun Tobacco, Ltd. manufactures cigarettes under the brand name “Bronco.”

8. Bronco brand cigarettes are sold in Pennsylvania.

9. Sun Tobacco, Ltd. is a “tobacco product manufacturer” as defined by the Tobacco Settlement Agreement Act. (35 P. S. §5673).

10. In the year 2000, Sun Tobacco, Ltd. manufactured, distributed, and /or sold cigarettes which were purchased by consumers in the Commonwealth of Pennsylvania directly or indirectly through distributors or retailers.

11. Sun Tobacco, Ltd. has not become a participating manufacturer under the Master Settlement Agreement.

12. Sun Tobacco, Ltd. has not established or funded an escrow account.

13. During the period between June 22, 2000, when the Act became effective, and December 31, 2000, 220,200 cigarettes manufactured by Sun Tobacco, Ltd. were sold within the Commonwealth.

14. Two hundred twenty thousand, two hundred (220,200) units, multiplied by

the statutory rate per unit as adjusted for inflation, \$.0111506, totals \$2,455.36, which Sun Tobacco, Ltd. was required to put into escrow by April 15, 2001 for the benefit of Pennsylvania for sales in the year 2000.

**COUNT I**  
**VIOLATION OF**  
**TOBACCO SETTLEMENT AGREEMENT ACT**

15. Paragraphs 1 through 14 are incorporated herein by reference.

16. The failure of Defendant Sun Tobacco, Ltd. to join the Master Settlement Agreement or establish an escrow account constitutes a violation of 35 P. S. §5674.

**WHEREFORE**, Plaintiff prays that:

- a. the Court find and declare that Sun Tobacco, Ltd. has violated the Pennsylvania Tobacco Settlement Agreement Act by failing to become a participating manufacturer or establishing a qualified escrow account in the amount of \$2,455.36 for the benefit of Pennsylvania for cigarettes sold in 2000;
- b. the Court enter an order pursuant to 35 P. S. §5674(c)(1), requiring Sun Tobacco, Ltd. to come into compliance with the Act within fifteen (15) days;
- c. Sun Tobacco, Ltd. be assessed a civil penalty pursuant to 35 P. S. §5674(c)(1) in the amount of \$2,455.36;
- d. the Commonwealth be awarded costs and attorney fees pursuant to 35 P. S. §5674(d); and
- e. the Court grant such other and further relief as it believes just and equitable.

## **COUNT II**

### **KNOWING VIOLATION OF TOBACCO SETTLEMENT AGREEMENT ACT**

17. Paragraphs 1 through 16 are incorporated herein by reference.

18. Sun Tobacco, Ltd. was notified in writing of its obligations under the Tobacco Settlement Agreement Act by letter dated March 20, 2001 from the Office of Attorney General. (A copy of the letter is attached hereto as Exhibit “A”).

19. Sun Tobacco, Ltd. was again notified of these obligations in the Commonwealth’s demand letter, dated May 2, 2001. (A copy of the letter is attached hereto as Exhibit “B”).

20. Sun Tobacco, Ltd. has knowingly violated Section 5674 of the Act by failing to become a participating manufacturer or placing \$2,455.36 into a qualified escrow fund.

**WHEREFORE**, Plaintiff prays that:

- a. the Court find and declare that Sun Tobacco, Ltd. has knowingly violated the Pennsylvania Tobacco Settlement Agreement Act by failing to become a participating manufacturer or establishing a qualified escrow account in the amount of \$2,455.36 for the benefit of Pennsylvania for cigarettes sold in 2000;
- b. the Court enter an order pursuant to 35 P. S. §5674(c)(1) requiring Sun Tobacco, Ltd. to come into compliance with the Act within fifteen (15) days;
- c. Sun Tobacco, Ltd. be assessed a civil penalty pursuant to 35 P. S. §5674(c)(2) in the amount of \$7,366.08;

- d. the Commonwealth be awarded costs and attorney fees pursuant to 35 P.  
S. §5674(d); and
- e. the Court grant such other and further relief as it believes just and  
equitable.

**Respectfully submitted,**

**D. MICHAEL FISHER**  
Attorney General

**ALEXIS L. BARBIERI**  
Executive Deputy Attorney General

**By:**

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**MICHAEL PLUMLEY**  
Senior Deputy Attorney General  
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Chief Deputy Attorney General  
Attorney I.D. #28625

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Tobacco Enforcement Section  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120  
PHONE: (717) 783-1794  
FAX: (717) 705-0916**

**Dated: August 1, 2001**